

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

Gabriella Sullivan; Rainier Arms, LLC; Second Amendment Foundation; and Firearms Policy Coalition, Inc.,

*Plaintiffs,*

V.

Bob Ferguson, in his official capacity as Washington State Attorney General; John R. Batiste, in his official capacity as Chief of the Washington State Patrol; Patti Cole-Tindall, in her official capacity as Interim Sheriff for King County, Washington; John Gese, in his official capacity as Sheriff for Kitsap County, Washington; Rick Scott, in his official capacity as Sheriff for Grays Harbor County, Washington; Dan Satterberg, in his official capacity as County Prosecutor for King County, Washington; Chad M. Enright, in his official capacity as County Prosecutor for Kitsap County, Washington; and Katie Svoboda, in her official capacity as County Prosecutor for Grays Harbor County, Washington,

### *Defendants.*

Case No. 3:22-cv-5403

## **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

1       Gabriella Sullivan, Rainier Arms, LLC, Second Amendment Foundation, and Firearms Policy  
2 Coalition, Inc., by and through the undersigned attorneys, file this Complaint against the above-  
3 captioned Defendants, in their official capacities as the officials responsible under Washington law  
4 for administering and enforcing the State's laws and regulations governing the manufacturing,  
5 importation, distribution, sale, and offering for sale of commonly possessed ammunition  
6 magazines improperly dubbed "large-capacity." Plaintiffs seek declaratory and injunctive relief: a  
7 declaration that Washington's ban on manufacturing, importing, distributing, selling, or offering  
8 for sale ammunition magazines capable of holding more than 10 rounds of ammunition violates  
9 the Second and Fourteenth Amendments and an injunction compelling Defendants to refrain from  
10 enforcing the invalid ban. In support of their Complaint against Defendants, Plaintiffs hereby  
11 allege as follows:

## I. Introduction

13       1. The State of Washington has criminalized one of the most common and important  
14 means by which its citizens can exercise their fundamental right of self-defense. By banning  
15 manufacturing, importation, distribution, and sale of standard-capacity firearm magazines that can  
16 carry more than 10 rounds of ammunition (“standard capacity magazines”), the State has barred  
17 law-abiding residents from legally acquiring common ammunition magazines and deprived them  
18 of an effective means of self-defense.

19       2.     Absent relief from this Court, Defendants will violate the constitutionally protected  
20 rights of Washington's law-abiding citizens and reinforce the erroneous notion that the right to  
21 keep and bear arms is nothing more than "a second-class right, subject to an entirely different body  
22 of rules than the other Bill of Rights guarantees." *McDonald v. City of Chicago*, 561 U.S. 742, 780  
23 (2010).

24       3.     Worse yet, Defendants will commit these constitutional violations without any  
25 realistic prospect of diminishing the misuse of firearms or the incidence of horrific mass-shootings.  
26 The State's ban on standard capacity magazines will do nothing to address or ameliorate these

1 public policy concerns. All it will do is leave law-abiding citizens more vulnerable to attack from  
2 better-armed and more ruthless assailants.

3       4. During uncertain times—with the recognition that governments have no legal duty  
4 to protect the people they serve—there is no guarantee that law enforcement will respond to an  
5 individual's 911 call during this crisis or after it (let alone in time to prevent a crime) and those  
6 who choose to exercise their fundamental and individual Second and Fourteenth Amendment  
7 protected rights cannot be denied those rights. Uncertain times are precisely when fundamental  
8 rights—like the right to keep and bear arms for self-defense—must be protected.

9       5. To be sure, Plaintiffs acknowledge that the Ninth Circuit has rejected a Second  
10 Amendment challenge to California’s similar restrictions on standard capacity magazines in  
11 *Duncan v. Bonta*, 19 F.4th 1087 (9th Cir. 2021) (en banc), but Plaintiffs believe that case was  
12 wrongly decided. They therefore institute this litigation to vindicate their Second Amendment  
13 protected rights and seek to have *Duncan* overruled by a court competent to do so. Of course, it is  
14 possible that the Supreme Court effectively will overrule *Duncan*’s mode of analysis in *New York*  
15 *State Rifle & Pistol Ass’n Inc. v. Bruen*, No. 20-843 (U.S. argued Nov. 3, 2021), and, if so,  
16 Plaintiffs reserve the right to argue accordingly.

17 6. Plaintiffs Gabriella Sullivan, Rainier Arms, LLC, Second Amendment Foundation,  
18 and Firearms Policy Coalition, Inc. bring this action to vindicate the rights that Defendants threaten  
19 to infringe.

## **JURISDICTION AND VENUE**

21       7.     This Court has subject-matter jurisdiction over Plaintiffs' claim under 28 U.S.C.  
22 §§ 1331 and 1343.

23 8. Plaintiffs seek remedies under 28 U.S.C. §§ 1651, 2201, and 2202 and 42 U.S.C.  
24 §§ 1983 and 1988.

25 9. Venue is proper in this Court under 28 U.S.C. § 1331(b)(1) & (b)(2).

## PARTIES

10. Plaintiff Gabriella Sullivan is a natural person and a citizen of Kitsap County, Washington. She owns at least one firearm that may be equipped with standard capacity magazines as well as multiple standard capacity magazines. She intends to continue purchasing standard capacity magazines for her existing firearms as well as purchase additional firearms equipped with standard capacity magazines. When Washington's standard capacity magazine ban becomes effective on July 1, 2022, she will be forced to abandon these plans or face prosecution for violating the law.

11. Plaintiff Rainier Arms, LLC (“Rainier Arms”) is a federally licensed firearm dealer located in King County, Washington. Rainier Arms specializes in high end rifles, pistols, and shotguns as well as parts, optics, and accessories. Rainier Arms sells standard capacity magazines both as standard equipment for many of the firearms it sells and also as standalone products. When Washington’s standard capacity magazine ban becomes effective on July 1, 2022, Rainier Arms will be forced to stop selling standard capacity magazines to civilians and to limit its sale of these items to government purchasers exempted from the state-wide ban. That will substantially constrict Rainier’s market and harm its business.

12. Plaintiff Second Amendment Foundation (“SAF”) is a nonprofit educational foundation incorporated under the laws of Washington with its principal place of business in Bellevue, Washington. SAF seeks to preserve the effectiveness of the Second Amendment through education, research, publishing, and legal action programs focused on the constitutionally protected right to possess firearms and firearm ammunition, and the consequences of gun control. SAF has over 700,000 members and supporters nationwide, including thousands of members in Washington. SAF brings this action on behalf of those members, including the named Plaintiffs herein. SAF’s members will be adversely and directly harmed by Defendants’ enforcement of the laws, regulations, policies, practices, and customs challenged herein.

13. Plaintiff Firearms Policy Coalition, Inc. (“FPC”) is a 501(c)(4) non-profit organization incorporated under the laws of Delaware with its principal place of business in

1 Sacramento, California. The purposes of FPC include defending and promoting the People's  
 2 rights—especially the fundamental, individual Second Amendment right to keep and bear arms—  
 3 advancing individual liberty, and restoring freedom. FPC serves its members and the public  
 4 through legislative advocacy, grassroots advocacy, litigation and legal efforts, research, education,  
 5 outreach, and other programs. FPC's members reside both within and outside Washington. FPC  
 6 brings this action on behalf of those members, including the named Plaintiffs herein. FPC's  
 7 Washington members will be adversely and directly harmed by Defendants' enforcement of the  
 8 laws, regulations, policies, practices, and customs challenged herein.

9       14. Defendant Bob Ferguson is sued in his official capacity as Washington State  
 10 Attorney General. As Attorney General, Ferguson has the authority to assist in the prosecution of  
 11 crimes, including violations of the challenged ban, and to institute and prosecute actions on behalf  
 12 of the state that are “necessary in the execution of the duties of any state officer.” WASH. REV.  
 13 CODE § 43.10.030.

14       15. Defendant John R. Batiste is sued in his official capacity as the Chief of the  
 15 Washington State Patrol. As Chief of the State Patrol, Batiste has the power and duty to enforce  
 16 the law, including the challenged ban, throughout the state. WASH. REV. CODE § 43.43.030.

17       16. Defendant Patti Cole-Tindall is sued in her official capacity as Interim Sheriff for  
 18 King County, Washington. As Interim Sheriff, Cole-Tindall is responsible for arresting and  
 19 imprisoning “all persons guilty of public offenses” in King County, including individuals who  
 20 violate the challenged ban. WASH. REV. CODE § 36.28.010.

21       17. Defendant John Gese is sued in his official capacity as Sheriff for Kitsap County,  
 22 Washington. As Sheriff, Gese is responsible for arresting and imprisoning “all persons guilty of  
 23 public offenses” in Kitsap County, including individuals who violate the challenged ban. *Id.*

24       18. Defendant Rick Scott is sued in his official capacity as Sheriff for Grays Harbor  
 25 County, Washington. As Sheriff, Scott is responsible for arresting and imprisoning “all persons  
 26 guilty of public offenses” in Grays Harbor County, including individuals who violate the  
 27 challenged ban. *Id.*

1       19.    Defendant Dan Satterberg is sued in his official capacity as County Prosecutor for  
2 King County. As County Prosecutor, Satterberg is responsible for “prosecut[ing] all criminal and  
3 civil actions” including for violations of the challenged ban, “in which the state or the county may  
4 be a party.” WASH. REV. CODE § 36.27.020.

5       20.     Defendant Chad M. Enright is sued in his official capacity as County Prosecutor  
6 for Kitsap County. As County Prosecutor, Enright is responsible for “prosecut[ing] all criminal  
7 and civil actions” including for violations of the challenged ban, “in which the state or the county  
8 may be a party.” *Id.*

9       21.    Defendant Katie Svoboda is sued in her official capacity as County Prosecutor for  
10 Grays Harbor County. As County Prosecutor, Svoboda is responsible for “prosecut[ing] all  
11 criminal and civil actions” including for violations of the challenged ban, “in which the state or  
12 the county may be a party.” *Id.*

## FACTUAL ALLEGATIONS

## 14 I. Washington's Ban on Standard Capacity Magazines.

15        22. On March 23, 2022, Governor Jay Inslee signed Engrossed Senate Bill 5078 (“the  
16 Act”), which made it illegal for any person in Washington to “manufacture, import, distribute, sell,  
17 or offer for sale any large capacity magazine,” *id.* § 3(1), defined as “an ammunition feeding device  
18 with the capacity to accept more than 10 rounds of ammunition, or any conversion kit, part, or  
19 combination of parts from which such a device can be assembled,” WASH. REV. CODE  
20 § 9.41.010(36).

21       23. The Act exempts (1) “any ammunition feeding device that has been permanently  
22 altered so that it cannot accommodate more than 10 rounds of ammunition,” (2) “22 caliber tube  
23 ammunition feeding device[s],” and (3) any “tubular magazine that is contained in a lever-action  
24 firearm,” WASH. REV. CODE § 9.41.010(36)(a)–(c), but it makes commerce in many of the most  
25 common magazines in Washington—and indeed the country—illegal.

26        24. Despite forbidding law-abiding citizens, from selling, importing, or distributing  
27 these so called “large capacity magazine[s],” the law exempts manufacture for or distribution and

1 sale to branches of the armed forces or to Washington state law enforcement agencies. Act  
 2 § 3(2)(a) & (b).

3       25. As a result, although it does not directly target purchasing standard-capacity  
 4 magazines, the Act makes it impossible for a law-abiding resident of Washington to lawfully  
 5 acquire standard capacity magazines by making it illegal to either sell them in-state or bring them  
 6 in from another state.

7       26. Violating the “large capacity magazine” ban is a gross misdemeanor punishable by  
 8 up to 364 days imprisonment and a fine of up to \$5,000. Act § 3(3); WASH. REV. CODE  
 9 § 9A.20.021(2).

10      27. The Act becomes effective on July 1, 2022. Act § 6.

11      **II. Washington Has Criminalized a Common and Important Means of Self-Defense.**

12      28. Although the Act describes magazines that can accept more than 10 rounds of  
 13 ammunition as “large capacity magazines,” this is a misnomer. Magazines capable of holding more  
 14 than 10 rounds of ammunition are a normal feature of firearms in the United States and are more  
 15 accurately described as “standard capacity magazines.”

16      29. As many as *half a billion* of these standard-capacity magazines have been owned  
 17 by Americans throughout the United States.

18      30. According to the 2021 National Firearms Survey, 48% of gun owners have owned  
 19 magazines that hold more than 10 rounds. William English, *2021 National Firearms Survey:*  
 20 *Updated Analysis Including Types of Firearms Owned* at 22 (May 13, 2022), available at  
 21 <https://bit.ly/3yPfoHw>. Given the survey’s estimate that 81.4 million Americans own firearms,  
 22 approximately 39 million Americans have owned at least one magazine that holds more than 10  
 23 rounds. And that is a conservative estimate since only current gun owners were polled. Those  
 24 individuals frequently owned more than one such magazine. In fact, Professor English found that  
 25 American gun owners have owned as many as 269 million handgun magazines that hold over 10  
 26 rounds and an additional 273 million rifle magazines over that threshold for a total of 542 million  
 27 such magazines. *Id.* at 24.

1       31.     The prevalence of these magazines should not come as a surprise. Many of the most  
 2 popular handguns in the nation are typically manufactured with magazines holding more than 10  
 3 rounds of ammunition, and the standard-issue magazines for many popular rifles—including the  
 4 most popular semiautomatic rifles in the country—have a capacity of more than 10 rounds.

5       32.     Magazines such as these are common throughout the country. Indeed, 40 states do  
 6 not impose any restrictions on magazine capacity.

7       33.     The ubiquity of standard capacity magazines among law-abiding Americans  
 8 demonstrates that they are useful for lawful purposes such as self-defense and hunting. In fact,  
 9 Professor English found that recreational target shooting (64.3%), home defense (62.4%), hunting  
 10 (47%), and defense outside the home (41.7%) are the most common reasons cited by individuals  
 11 who own standard capacity magazines that hold more than 10 rounds. *Id.* at 23.

12       34.     Crime, on the other hand, is not a common use for these magazines. There were  
 13 approximately 350,000 violent crimes committed with firearms in 2020. Rachel E. Morgan and  
 14 Alexandra Thompson, *Criminal Victimization, 2020*, Table 8, BUREAU OF JUSTICE STATISTICS,  
 15 October 2021, <https://bit.ly/3PGOI1A>. Even if each one of those crimes was committed with a gun  
 16 equipped with a magazine capable of holding more than ten rounds—certainly overstating their  
 17 use—and even if each crime were committed using a different magazine, that would still mean  
 18 that just 0.06% of all such magazines (up to 542 million total) would be used in crimes each year.  
 19 Stated the other way, approximately 99.94% of these magazines are *only* used lawfully each year.

20       35.     Proponents of bans like the Act often seek to justify them based on a concern with  
 21 mass shooting events specifically. But mass shootings represent an extremely small subset of all  
 22 violent crime committed with a gun and so just a fraction of the 0.06% of standard capacity  
 23 magazines holding more than 10 rounds that could possibly have been used in crime are ever used  
 24 in mass shootings. See Rosanna Smart & Terry L. Schell, *Mass Shootings in the United States*,  
 25 RAND (April 15, 2021), <https://bit.ly/3MRkTtu> (“Mass shootings are tragic, traumatic, and  
 26 shocking events. . . . However, they represent a very small fraction of the homicides in the United  
 27 States.”). In fact, from 1976 through 2018, an average of just 26 people were killed per year in

1 public mass shooting incidents (defined as “incidents that occur in the absence of other criminal  
 2 activity (e.g., robberies, drug deals, and gang ‘turf wars’) in which a gun was used to kill four or  
 3 more victims in a public location within a 24-hour period”). Grant Duwe, *Patterns and prevalence*  
 4 of *lethal mass violence*, 2019 J. CRIM. & PUB. POL’Y 1, 12 (2019). That is slightly lower than the  
 5 number of individuals (27) killed each year by lightning strikes and significantly lower than the  
 6 number injured by lightning strikes (243). *How Dangerous is Lightning?*, NAT’L WEATHER SERV.,  
 7 <https://bit.ly/3wN3iNU>. Furthermore, there is no convincing empirical evidence that a state  
 8 magazine ban will have any impact at all on mass shootings. *See* Christopher S. Koper, *Updated*  
 9 *Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence*,  
 10 1994–2003, 81 n.95 NAT’L INST. OF JUST., U.S. DEP’T OF JUST., <https://bit.ly/3NDzBUK>  
 11 (explaining that “it is hard to draw definitive conclusions” about the effectiveness of state assault  
 12 weapons bans in part because “the impact of [such] laws is likely undermined to some degree by  
 13 the influx of [assault weapons] from other states”).

14       36.     In line with the widespread possession and use of standard capacity magazines and  
 15 the rarity of their use for crime, there is no longstanding historical tradition of prohibiting the  
 16 manufacture, importation, or sale of such magazines. Magazine bans were unknown in the United  
 17 States before the 20th century. Bans like Washington’s are recent phenomena—indeed, until the  
 18 Act was put in place, Washington did not restrict manufacturing, importing or selling standard  
 19 capacity magazines and no such laws existed anywhere in the United States before the 1990s.

20       37.     This is true even though firearms capable of holding multiple rounds have existed  
 21 since the late 15th century, and firearms capable of firing more than ten rounds without reloading  
 22 have existed at least since the late 16th century. *See* David B. Kopel, *The History of Firearm*  
 23 *Magazines and Magazine Prohibitions*, 78 ALB. L. REV. 849, 852–53 (2015) (“The first known  
 24 firearm that was able to fire more than ten rounds without reloading was a sixteen-shooter created  
 25 around 1580, using ‘superposed’ loads (each round stacked on top of the other.”).

26       38.     Multiple round firearm technology quickly developed from multi-shot wheel lock  
 27 rifles to repeating, magazine-fed rifles, with the English military employing magazine-fed

1 repeating firearms as early as 1658. Clayton E. Cramer & Joseph E. Olson, *Pistols, Crime, and*  
 2 *Public: Safety in Early America*, 44 WILLAMETTE L. REV. 699, 716 (2008) (citing A. V. B.  
 3 NORMAN & DON POTTINGER, ENGLISH WEAPONS & WARFARE: 449–1660 206–07 (1979)). The  
 4 now famous “Puckle Gun,” or “Defence Gun,” was patented by James Puckle in 1718 in England  
 5 and operated using “a Sett of Chambers ready Charg’d to be Slip’d on when the first Sett are pull’d  
 6 off to be recharg’d.” U.K. Patent No. 418 (filed May 15, 1718) <https://bit.ly/3t5UGzu>; CHARLES  
 7 FOULKES, THE GUN-FOUNDERS OF ENGLAND: WITH A LIST OF ENGLISH AND CONTINENTAL GUN-  
 8 FOUNDERS FROM THE XIV TO THE XIX CENTURIES 32–33 (1937).

9       39.    Firearms capable of firing multiple rounds without reloading were well known to  
 10 the founding generation. In 1777, Joseph Belton demonstrated a repeating rifle that could hold 16  
 11 rounds of ammunition to members of the Continental Congress. Robert Held, THE BELTON  
 12 SYSTEMS, 1758 & 1784–86: AMERICA’S FIRST REPEATING FIREARMS 37 (1986). Belton also  
 13 informed Congress that he could equip his rifle with as many as 20 rounds at a time. *Id.* at 17. And  
 14 Meriwether Lewis carried a Girandoni air rifle, with a 22-round tubular, spring-loaded magazine  
 15 on his expedition with William Clark. James B. Garry, WEAPONS OF THE LEWIS AND CLARK  
 16 EXPEDITION 100–01 (2012).

17       40.    “Repeater” firearms were extremely popular in the 19th century and came in many  
 18 forms. The New York Evening Post in 1821 lauded Isaiah Jennings for inventing a repeater  
 19 “important[t] for both public and private use,” whose “number of charges may be extended to  
 20 fifteen or even twenty.” *Newly Invented Muskets*, N.Y. EVENING POST, Apr. 10, 1822, in 59  
 21 Alexander Tilloch, THE PHILOSOPHICAL MAGAZINE AND JOURNAL COMPREHENDING THE VARIOUS  
 22 BRANCHES OF SCIENCE, THE LIBERAL AND FINE ARTS, GEOLOGY, AGRICULTURE, MANUFACTURES,  
 23 AND COMMERCE 467-68 (Richard Taylor ed., 1822).

24       41.    Around the time of the Civil War, multi-round rifles became commonplace. The  
 25 16-shot Henry Rifle, invented in 1861, was very popular. Soon after, the first Winchester rifle was  
 26 produced and it could hold 17 rounds in the magazine with one more in the chamber. *See* Norm  
 27 Flayderman, FLAYDERMAN’S GUIDE TO ANTIQUE FIREARMS AND THEIR VALUES 268 (6th ed.

1 1994). As a result, standard capacity magazines were commonly possessed already in the 1860s,  
 2 130 years before attempts to strictly regulate them would come along. David B. Kopel, *The History*  
 3 *of Firearm Magazines and Magazine Prohibitions*, 78 ALB. L. REV. 849, 871 (2015).

4 42. There is no reliable proof that restrictions on new manufacturing or sales of  
 5 standard capacity magazines will reduce violence involving firearms. Between 1994 and 2004,  
 6 federal law prohibited possession or transfer of magazines holding more than 10 rounds of  
 7 ammunition (though it exempted magazines lawfully possessed before the law's enactment). A  
 8 report prepared for the U.S. Department of Justice assessing the effectiveness of the law concluded:  
 9 “[W]e cannot clearly credit the ban with any of the nation’s recent drop in gun violence,” and  
 10 “there has been no discernible reduction in the lethality and injuriousness of gun violence.”  
 11 Christopher S. Koper et al., *An Updated Assessment of the Federal Assault Weapons Ban: Impacts*  
 12 *on Gun Markets and Gun Violence, 1994-2003*, Rep. to the Nat’l Inst. of Justice, U.S. DEP’T OF  
 13 JUSTICE at 96 (2004), *available at* <https://bit.ly/3MQZmkL>. What is more, due to the porousness  
 14 of state borders there is even less reason to think that a state-level ban would be effective in  
 15 reducing violence. *See id.* at 81 n.95.

16 43. There are, however, many sound reasons why the average citizen might want to use  
 17 magazines that accept more than 10 rounds of ammunition. Most obviously, a law-abiding citizen  
 18 would not want to run out of ammunition and be forced to reload while under criminal attack,  
 19 which could involve multiple assailants, an assailant using a magazine containing more than 10  
 20 rounds, or an assailant using multiple firearms. In fact, according to the 2021 National Firearms  
 21 Survey, in over half of self-defense incidents the defender faced two or more attackers—and in  
 22 over 20% there were three or more. English, *supra* ¶ 29, at 15. Given the stressful and often-  
 23 unexpected nature of such encounters, forcing the victim to reload puts her at a significant  
 24 disadvantage relative to her assailant.

25 44. Standard capacity magazines are also important for average citizens seeking to  
 26 defend themselves because most shots fired in armed altercations miss their target. Professional  
 27 police, who are trained and must regularly practice with their firearms, miss their targets more

1 often than not. In a fourteen-year study of the Dallas Police Department, for example, officers  
 2 achieved an accuracy rate of just 35%, and half of all Dallas officers missed *every* shot they fired.  
 3 Christopher M. Donner and Nicole Popovich, *Hitting (or missing) the mark: An examination of*  
 4 *police shooting accuracy in officer-involved shooting incidents*, *Policing: An International*  
 5 *Journal* 42, no. 3 (2019), <https://bit.ly/3Lrp0JC>. An average citizen forced to defend herself  
 6 suddenly is not likely to have a higher accuracy rate than professional police officers would.

7       45.     As an example, Susan Gonzalez, a Jacksonville resident, was severely limited in  
 8 her ability to defend herself by the size of her handgun’s magazine. She was shot in the chest one  
 9 evening when two armed men broke into her home. She retreated to her bedroom and found her  
 10 husband’s .22 pistol. After firing warning shots, she shot at one of the two men and hit him twice  
 11 with her seven or eight remaining bullets. Out of ammunition and unable to reload, she was shot  
 12 once more by the other gunman, who proceeded to put his gun to her head and demand the keys  
 13 to the couple’s truck. *See Duncan v. Becerra*, 265 F. Supp. 3d 1106, 1130–31 (S.D. Cal. 2017).

14       46.     By contrast, a homeowner in Houston successfully fended off five home invaders  
 15 after firing at least a dozen shots in self-defense. Katherine Marchand, *5 shot and 3 killed after*  
 16 *homeowner opens fire on suspects in east Houston*, ABC13 (Jan. 20, 2019),  
 17 <https://abc13.co/2EYq0ag>.

18       47.     Law enforcement practice confirms what common sense and these examples  
 19 indicate: law-abiding citizens frequently need standard capacity magazines to protect themselves  
 20 from those wishing to do them harm. Police departments typically issue handguns with magazines  
 21 that hold more than 10 rounds. *See* Massad Ayoob, *THE COMPLETE BOOK OF HANDGUNS* 50, 87–  
 22 90 (2013). And they do so for good reason. In 2020, 14% of New York City police officers  
 23 involved in incidents in which they fired their weapons to defend themselves and others fired more  
 24 than 10 rounds. New York Police Dep’t, *2020 Use of Force Report* at 27, available at  
 25 <https://on.nyc.gov/3GlxAKH>. Likely for this reason, the Act exempts from its prohibitions  
 26 manufacture, import, and sale to Washington law enforcement agencies. But the average  
 27

1 Washington citizen has just as much right as a police officer to defend herself with standard  
2 capacity magazines.

3 48. Unlike law-abiding citizens, violent criminals will not be meaningfully constrained  
4 by Washington's magazine ban. Given the hundreds of millions of magazines in circulation in the  
5 country (including in Washington, where they remain widely possessed), it will not be difficult for  
6 violent criminals to acquire them through illegal sales or importation despite Washington's ban.  
7 And unlike law-abiding citizens, violent criminals will have no compunction about violating  
8 Washington's magazine ban. Even if violent criminals were effectively prevented from acquiring  
9 banned magazines, they could easily compensate by bringing multiple firearms or magazines with  
10 them to the scene of the crime. Their ability to do so is made possible by the fact that violent  
11 criminals, and not their law-abiding victims, choose the time and place of crimes and can plan  
12 accordingly.

#### **STATEMENT OF FACTS RELATING TO GABRIELLA SULLIVAN**

14 49. The foregoing paragraphs are hereby incorporated herein as if set forth in full.

15 50. Plaintiff Gabriella Sullivan is an adult resident of Kitsap County, Washington.

16 51. Ms. Sullivan is a law-abiding, responsible citizen.

17 52. Ms. Sullivan is a member of Plaintiffs SAF and FPC.

18 53. Ms. Sullivan owns a Sig Sauer P365 handgun and a Smith & Wesson M&P Sport  
19 .22 rifle. Both firearms may be equipped with standard capacity magazines capable of holding  
20 more than 10 rounds of ammunition, and Ms. Sullivan owns standard capacity magazines for both.

21 54. Ms. Sullivan desires to purchase additional firearms, including an AR-15 style rifle,  
22 a Glock 19, and a Walther PPQ, all of which are ordinarily sold with standard capacity magazines  
23 holding more than 10 rounds of ammunition.

24 55. Ms. Sullivan intends to use additional standard capacity magazines and firearms  
25 equipped with standard capacity magazines for self-defense and other lawful purposes.

26 56. It is Ms. Sullivan's present intention and desire to purchase additional standard  
27 capacity magazines capable of holding more than 10 rounds of ammunition after the Act's effective

1 date, were it lawful to do so, for use with the firearms she currently owns and to purchase additional  
 2 firearms equipped with standard capacity magazines of that size. When the Act becomes effective  
 3 on July 1, 2022, she will not be able to purchase additional magazines or firearms equipped with  
 4 standard capacity magazines lawfully, because the existence of the Act, and Defendants'  
 5 enforcement of it, will extinguish the legal market for those items in Washington, and will make  
 6 it unlawful for Ms. Sullivan to import them herself.

7 **STATEMENT OF FACTS RELATING TO RAINIER ARMS, LLC**

8 57. The foregoing paragraphs are hereby incorporated herein as if set forth in full.

9 58. Plaintiff Rainier Arms is a limited liability corporation located in King County,  
 10 Washington. Rainier Arms is owned and operated by John Hwang, a member of Plaintiffs SAF  
 11 and FPC.

12 59. Rainier Arms is a federally licensed firearm dealer. Every month, it sells hundreds  
 13 of standard capacity magazines capable of holding more than 10 rounds of ammunition and dozens  
 14 of firearms equipped with such magazines.

15 60. It is Rainier Arms' present intention and desire to continue to sell standard capacity  
 16 magazines and firearms equipped with standard capacity magazines. When the Act becomes  
 17 effective on July 1, 2022, however, it will be forced to stop selling standard capacity magazines,  
 18 either individually or as part of other firearms. As a result, beginning on July 1, 2022, Rainier  
 19 Arms will lose out on profits from sales of standard capacity magazines as a direct result of the  
 20 Act.

21 61. In addition to risking prosecution, Rainier Arms could also lose its federal firearms  
 22 license if it were to violate the Act. As a vendor who is harmed by the magazine ban, Rainier  
 23 challenges the ban to vindicate the Second Amendment protected rights of its itself and customers.  
 24 *See Teixeira v. County of Alameda*, 873 F.3d 670, 678 (9th Cir. 2017); *Ezell v. City of Chicago*,  
 25 651 F.3d 684 (7th Cir. 2011).

26 **STATEMENT OF FACTS RELATING TO DANIEL MARTIN**

27 62. The foregoing paragraphs are hereby incorporated herein as if set forth in full.

1 63. Daniel Martin is an adult resident of Grays Harbor County, Washington.

2 64. Mr. Martin is a law-abiding, responsible citizen.

3 65. Mr. Martin is a member of Plaintiffs SAF and FPC.

4 66. Mr. Martin owns firearms that can be equipped with standard capacity magazines  
5 and he owns several standard capacity magazines for use in those firearms. He is a frequent  
6 participant in shooting competitions, for which standard capacity magazines are commonly used.  
7 Although he has not competed in the past two years as a result of the COVID-19 pandemic and  
8 rising ammunition prices, he plans to enter several shooting competitions this summer. Even when  
9 not competing, Mr. Martin practices with and shoots his firearms regularly and possesses them for  
10 the purpose of self-defense.

11 67. As a result of his regular sport shooting activities, Mr. Martin has worn out or  
12 broken standard capacity magazines in the past and has purchased new ones to replace them or  
13 parts to fix or extend their capacity when necessary. He also purchases new firearms when he is  
14 able to and plans to purchase additional firearms equipped with standard capacity magazines  
15 exceeding 10 rounds in the future, including after the Act's effective date, were it not a crime to  
16 do so.

17 68. Mr. Martin intends to use additional standard capacity magazines and firearms  
18 equipped with the same for sport shooting, self-defense, and other lawful purposes.

19 69. When the Act becomes effective on July 1, 2022, he will not be able to purchase  
20 additional standard capacity magazines, nor will he be able to purchase firearms equipped with  
21 standard capacity magazines lawfully, because the existence of the Act, and Defendants'  
22 enforcement of it, will extinguish the legal market for those items in Washington, and will make  
23 it unlawful for Mr. Martin to import them himself.

24 **COUNT ONE**

25 **The Act is facially unconstitutional Under the Second and**  
26 **Fourteenth Amendments to the U.S. Constitution**

27 70. The foregoing paragraphs are hereby incorporated herein as if set forth in full.

71. The Second Amendment to the United States Constitution provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

72. The constitutional guarantee is incorporated against the states through the Fourteenth Amendment. *McDonald*, 561 U.S. at 791; *id.* at 806 (Thomas, J., concurring in the judgment.).

73. The Supreme Court has held that the right to keep and bear arms is a fundamental right. *Dist. Of Columbia v. Heller*, 554 U.S. 570, 581 (2008).

74. Restrictions on ammunition, including ammunition magazines, restrict the use of “Arms” within the meaning of the Second Amendment. “[W]ithout bullets, the right to bear arms would be meaningless. A regulation eliminating a person’s ability to obtain or use ammunition could thereby make it impossible to use firearms for their core purpose.” *Jackson v. City & Cnty. of San Francisco*, 746 F.3d 953, 967 (9th Cir. 2014).

75. Outright bans on manufacturing, importing, selling, or offering for sale commonly possessed magazines violate the Second Amendment by prohibiting all Washington residents from acquiring those magazines and firearms equipped with them and therefore denying them the fundamental right to keep and bear arms.

76. An outright ban on manufacturing, importing, selling, or offering for sale constitutionally protected magazines violates the Second Amendment by prohibiting retailers from engaging in commerce necessary for individuals to exercise their fundamental right to keep and bear arms. *Cf. Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52, 62 (1976).

## PRAYER FOR RELIEF

**WHEREFORE**, Plaintiffs respectfully request that this Honorable Court enter judgment in their favor and against Defendants, as follows:

- a. Declare that Washington's ban on manufacturing, importing, selling, or offering for sale magazines with a capacity over 10 rounds violates the right to keep and bear arms

1 as guaranteed by the Second and Fourteenth Amendments to the United States  
2 Constitution;

3 b. Enjoin Defendants, their officers, agents, servants, employees, and all persons in active  
4 concert or participation with them from enforcing the provisions of the Act and all  
5 related laws, regulations, policies, practices, and customs that would impede or  
6 criminalize the exercise of the right to keep and bear arms;

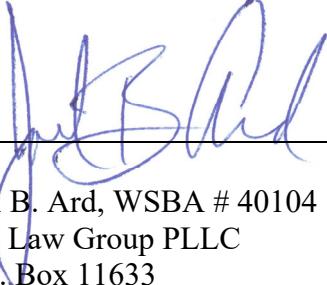
7 c. Grant Plaintiffs any and all damages to which they are entitled, including but not  
8 limited to actual, compensatory, punitive and/or nominal damages;

9 d. Pursuant to 42 U.S.C. § 1988 award costs and attorneys' fees and expenses to the extent  
10 permitted; and

11 e. Grant any and all other equitable and/or legal remedies as this Court may see fit.

1 June 3, 2022.

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